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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights, Issue 26, Spring 2022

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its twenty-sixth edition of Supervisory Highlights.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on May 2, 2022. The findings included in this report cover examinations completed between July 2021 and December 2021 in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, prepaid accounts, remittances, and student loan servicing.

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SUPPLEMENTARY INFORMATION:

1. Introduction

The Consumer Financial Protection Bureau's (CFPB or Bureau) supervision program examines large banks and certain nonbanks for compliance with Federal consumer financial law. A key focus of the program is detecting and assessing risks to consumers and to markets for consumer financial products and services. Through its supervisory work, the Bureau promotes the development of markets for consumer financial products and services that are fair, transparent, and competitive. One important goal of this work is to foster financial inclusion and racial equity. The Bureau supervises and applies the law to entities subject to its authority in a consistent manner, regardless of charter type (bank or nonbank), market, or geographical location.

The findings included in this report cover examinations completed between July 2021 and December 2021 in the areas of auto servicing, consumer reporting, credit card account management, debt collection, deposits, mortgage origination, prepaid accounts, remittances, and student loan servicing. To maintain the anonymity of the supervised institutions discussed in S*upervisory Highlights*, references to institutions generally are in the plural and the related findings may pertain to one or more institutions. This edition of *Supervisory Highlights* also summarizes recent developments in the Bureau's supervision program and remedial actions.

The CFPB publishes *Supervisory Highlights* to help institutions and the general public better understand how we examine institutions for compliance with Federal consumer financial laws. *Supervisory Highlights* summarizes existing legal requirements and violations identified in the course of the Bureau's exercise of supervisory and enforcement authority.[1] We invite readers with questions or comments about *Supervisory Highlights* to contact us at CFPB_Supervision@cfpb.gov.

2. Supervisory Observations

2.1 Auto Servicing

The Bureau continues to examine auto loan servicing activities, primarily to assess whether entities have engaged in any unfair, deceptive, or abusive acts or practices (UDAAPs) prohibited by the Consumer Financial Protection Act of 2010 (CFPA).[2]

2.1.1 Wrongful Repossession

Examiners have continued to identify wrongful repossessions at auto servicers.[3] Recent examinations found that servicers engaged in unfair acts or practices when they repossessed

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[1] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

[2] 12 U.S.C. 5531, 5536.

[3] This unfair act or practice was previously described in *Supervisory Highlights*, Issue 16, Summer 2017; *Supervisory Highlights*, Issue 17, Summer 2018; and CFPB Bulletin 2022-04: Mitigating Harm from Repossession of Vehicles. These editions of Supervisory Highlights are available at: Supervisory Highlights | Consumer Financial Protection Bureau (consumerfinance.gov). The CFPB Bulletin 2022-04 is available at: cfpb_bulletin-2022-04_mitigating-harm-from-repossession-of-automobiles.pdf (consumerfinance.gov).

vehicles after consumers took action that should have prevented the repossession. This caused substantial injury by depriving borrowers of the use of their vehicles, and many consumers also experienced consequences such as missed work, expenses for alternative transportation, repossession-related fees, detrimental credit reporting, and vehicle damage during the repossession process. Such injury was not reasonably avoidable because consumers had taken action they believed would halt repossession and there was no additional action the consumer could take to prevent the repossession. Finally, the injury was not outweighed by countervailing benefits to the consumer or to competition. In response to these findings, servicers are enhancing their procedures, including enhancing timely communications with repossession agents, and remediating consumers.

2.1.2 Misleading consumer about the final loan payment amount after deferral

Examiners found that servicers engaged in deceptive acts or practices when they misled consumers about the final loan payment amount after a deferral.[4] Servicers may let consumers defer payments for many months when they experience financial difficulties, and the deferrals frequently increase the consumer's final payment amount. Servicers sent consumers notices about their final payment amounts that included only imprecise conditional statements, such as stating that the final payment "may be larger." These conditional statements, without additional information about the magnitude of the final payment, likely misled consumers to believe the payment would only increase somewhat, when in fact the final payment likely would dramatically increase, by amounts multiple times larger than a normal payment. The consumers' interpretation of the representation was reasonable under the circumstances and was material because it likely impacted consumers' financial planning.

2.1.3 Overcharging for add-on products

[4] Supervision examiners first identified this practice as a consumer risk in *Supervisory Highlights*, Issue 23 – Winter 2021.

When consumers purchase an automobile, auto dealers and finance companies offer optional, add-on products that consumers can purchase. Some of the add-on products provide specific types of potential benefits, such as guaranteed asset protection (GAP) products that offer to help pay off an auto loan if the car is totaled or stolen and the consumer owes more than the car's depreciated value. The add-on products' potential benefits apply only for specific time periods, such as four years after purchase or for the term of the loan, and only under certain circumstances.

Auto dealers and finance companies often charge consumers all payments for any add-on products as a lump sum at origination of the auto loan or purchase of the vehicle. Dealers and finance companies generally include the lump sum cost of the add-on product as part of the total vehicle financing agreement, and consumers typically make payments on these products throughout the loan term, even if the product expires years earlier.

Examiners found that servicers engaged in unfair practices by failing to request refunds from the third-party administrators for "unearned" fees related to GAP products and failing to apply the applicable refunds to the accounts after repossession and cancellation of the contracts. At that point, the consumers did not have the vehicle that had been subject to the GAP product, and the product no longer offered any possible benefit to consumers.

Examiners found that while servicers did maintain policies to obtain applicable refunds, they frequently failed to apply for these refunds from third-party administrators. When consumers' vehicles were repossessed and sold and there was a deficiency balance (that is, the money unpaid on the sale price of the vehicle after repossession), the servicers' failure to apply for the GAP product refunds from the third-party administrators resulted in inaccurate deficiency balances. The partial refunds from the third-party administrators would have paid for at least some of the GAP product fees that were financed, but instead, servicers included charges for the unused portions of the financed GAP products in the deficiency balances.

Examiners found that servicers sent deficiency notices to consumers and reported balances to third-party debt buyers that included these inaccurate amounts as the deficiency balance owed by consumers. Including these amounts in the deficiency balances resulted in substantial injury to consumers because the amounts to be collected were higher than the true amount owed, and the deficiency balances were likely to be collected by the third-party debt buyers when the products provided no possible benefit, after the vehicles were repossessed and the accounts were charged off. Consumers could not reasonably avoid the injury because they had no control over the servicers' refund processing actions. And they generally could not apply for such refunds themselves because they were unaware that the contract provided they could do so. The injury was not outweighed by any countervailing benefit to consumers or competition.

In response to these findings, servicers updated disclosure language and practices. Some servicers included estimated final payment amounts on deferral notices while other servicers provided consumers with access to online calculator tools to track their final payment amounts. Additionally, some servicers conducted affirmative outreach when the final payment date approached to offer workout options that allowed borrowers to pay the large final payments in more than one installment.

2.2 Consumer Reporting

Companies in the business of regularly assembling or evaluating information about consumers for the purpose of providing consumer reports to third parties are "consumer reporting companies " (CRCs).[5] These companies, along with the entities -- such as banks, loan servicers, and others -- that furnish information to the CRCs for inclusion in consumer reports, play a vital role in availability of credit and have a significant role to play in the fair and accurate reporting of credit information. They are subject to several requirements under the Fair Credit

[5] The term "consumer reporting company" means the same as "consumer reporting agency," as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), including nationwide consumer reporting agencies as defined in 15 U.S.C. 1681a(p) and nationwide specialty consumer reporting agencies as defined in 15 U.S.C 1681a(x).

Reporting Act (FCRA)[6] and its implementing regulation, Regulation V,[7] including the requirement to reasonably investigate disputes and to furnish data subject to the relevant accuracy requirements. In recent reviews, examiners found deficiencies in CRCs' compliance with FCRA dispute investigation requirements and furnisher compliance with FCRA and Regulation V accuracy and dispute investigation requirements.

2.2.1 CRC Duty to conduct reasonable reinvestigation of disputed information

The FCRA requires that a CRC must conduct a reasonable reinvestigation of disputed information to determine if the disputed information is inaccurate whenever the completeness or accuracy of any item of information contained in a consumer's file is disputed by the consumer and the consumer notifies the CRC directly, or indirectly through a reseller, of such dispute.[8] In several reviews of CRCs, examiners found that CRCs failed to conduct reasonable investigations of disputes in multiple ways. Examiners also found that rather than resolving disputes consistent with the investigation conducted by the furnisher, which in many instances would have required correcting inaccurate derogatory information and replacing it with accurate positive information, CRCs simply deleted thousands of disputed tradelines. Examiners also found that CRCs failed to conduct reasonable dispute investigations when they failed to review and consider all relevant information submitted by the consumer in support of their disputes. After identification of these issues, CRCs were directed to cease violating the FCRA's dispute investigation requirements.

2.2.2 CRC duty to provide prompt notice of dispute to furnisher

The FCRA requires that when a CRC receives notice of a dispute from a consumer or reseller, the CRC must provide notification of the dispute to any person who provided any item of information in dispute before the expiration of the five-business-day period beginning on the date that the CRC received the notice of dispute.[9] In several reviews of CRCs, examiners found

[6] 15 U.S.C. 1681 *et seq.*
[7] 12 CFR, part 1022.
[8] 15 U.S.C. 1681i(a)(1)(A).
[9] 15 U.S.C. 1681i(a)(2).

that CRCs failed to send notifications of dispute to furnishers within five business days of receiving the dispute. After identification of these issues, CRCs were directed to cease violating the FCRA's dispute notification timeliness requirements.

2.2.3 CRC duty to provide written notice to the consumer of the results of reinvestigation

The FCRA requires that a CRC must provide written notice of the results of a dispute reinvestigation not later than five business days after the completion of the reinvestigation.[10] In several reviews of CRCs, examiners found disputes where an FCRA compliant statement of results was not sent within the required five business days of completing the dispute investigation. Moreover, examiners found that CRCs' statements of results omitted material information necessary to understand the results of the investigation. Examiners also found that in some cases the statement of results was incorrect – stating, for example, that disputed information had been corrected when, in fact, the disputed information was verified as accurate by the furnisher and not materially changed by the CRC. After identification of these issues, CRCs were directed to cease violating the FCRA's dispute results notice requirements.

2.2.4 Furnisher duty to conduct reasonable investigation of indirect disputes

After receiving notice of a dispute of the completeness or accuracy of any information from a CRC, furnishers are required to conduct an investigation with respect to the disputed information.[11] Such investigations must include a review of all relevant information provided by the CRC, and the furnisher must complete the investigation and report the results to the CRC before the expiration of the time period required for the CRC to complete its investigation and provide notice of the results to the consumer.[12] When disputes are forwarded to furnishers by CRCs, the FCRA does not provide the furnisher with discretion to deem such disputes frivolous; for indirect disputes, only the CRC has discretion to determine that disputes are frivolous or

[10] 15 U.S.C. 1681i(a)(6).
[11] 15 U.S.C. 1681s-2(b)(1)(A).
[12] 15 U.S.C. 1681s-2(b)(1)(B)-(C); 15 U.S.C. 1681s-2(b)(2).

irrelevant.[13] Examples of failures to conduct reasonable investigations of indirect disputes from recent Bureau exams include:

- Credit card furnishers failed to conduct any investigations of disputes received from CRCs or send results of dispute investigations to the CRCs due to furnishing system implementation issues. Credit card furnishers also failed to conduct reasonable investigation of disputes due to erroneously deeming thousands of indirect disputes as frivolous. Credit card furnishers also sent incorrect results of disputes to CRCs. For example, after completing the dispute investigation, furnishers included incorrect special comment codes on the automated credit dispute verification forms (ACDV) used to communicate the results to the CRCs. After identifying that incorrect results were sent to the CRCs, the furnishers sent updates to the CRCs reporting the correct special comment codes.
- Deposit furnishers failed to conduct any investigations of disputes received from specialty CRCs or send results of dispute investigations to specialty CRCs. The furnishers stated the dispute investigations were not conducted because they were not aware that any disputes had been received from specialty CRCs, as a result of the furnishers' insufficient dispute intake procedures. The specialty CRCs deleted the disputed information from the consumers' files because the furnishers failed to timely investigate and respond to the disputes. In response to these findings, the furnishers developed revised dispute handling policies and procedures and compliance monitoring procedures to ensure all disputes are tracked and resolved completely within the time periods required by the FCRA.
- Auto furnishers failed to conduct reasonable investigations of disputes received by CRCs. Specifically, furnishers incorrectly calculated consumers' payment histories while

[13] 15 U.S.C. 1681i(a)(3).

processing dispute investigations, resulting in the furnishers including incorrect payment histories in the dispute results reported to the CRCs.

In response to these findings, furnishers revised their training programs to ensure that dispute agents conduct reasonable investigations of disputes received from CRCs. Furnishers are also conducting reviews to identify and remediate all impacted accounts for which payment histories were reported inaccurately.

2.2.5 Furnisher duty to report the results of direct dispute investigations to consumers

The FCRA and Regulation V require furnishers to complete their investigations of direct disputes received from consumers and to report the results to the consumer before the expiration of the time period that would have been required for the CRC to complete its investigation had the consumer sent the dispute to the CRC rather than the furnisher.[14]

In reviews of credit card furnishers, examiners found that the furnishers conducted investigations of direct disputes and sent the consumers response letters, but the letters failed to communicate the results of the investigations. Specifically, for disputes that resulted in corrections to disputed information, the furnishers used template response letters that included confusing language, which created ambiguity about whether changes had been made in response to the dispute investigations. These letters failed to provide consumers with the results of the dispute investigations because they did not affirmatively inform the consumers that changes were made in response to their disputes. In response to these findings, the furnishers implemented revised template response letters, which do not contain ambiguous language and clearly communicate that changes were made in response to the dispute investigations.

2.2.6 Furnisher duty to correct and update information

The FCRA requires that when a furnisher determines that information furnished to CRCs is not complete or accurate, the furnisher must "promptly" notify the CRC of that determination

[14] 15 U.S.C. 1681s-2(a)(8)(E)(iii); 12 CFR 1022.43(e)(3).

and provide the CRC with any corrections to that information, or any additional information, that is necessary to make the information provided by the furnisher to the CRC complete and accurate.[15] After determining that information furnished to CRCs is not complete or accurate, furnishers must also stop furnishing to CRCs information that remains not complete or accurate.[16]

In reviews of credit card furnishers, examiners found that furnishers failed to send updating or correcting information to CRCs after making a determination that information the furnishers had reported was not complete or accurate. For example, examiners found that after determining that accounts that had been given new account numbers were erroneously being furnished twice to the CRCs, once under the old account number and once under the new account number, the furnishers continued to furnish the duplicate accounts to the CRCs. Examiners also found that credit card furnishers violated this provision by failing to promptly update account statuses to settled-in-full, paid-in-full, voluntarily closed, or discharged in bankruptcy upon recognizing that the account statuses furnished did not match the account statuses in the furnishers' systems of record.

Supervision directed the furnishers to update their systems to allow for prompt updates to, and to prevent the continued furnishing of information determined to be incomplete or inaccurate.

2.2.7 Furnisher duty to establish and implement reasonable policies and procedures concerning the accuracy and integrity of furnished information

Regulation V requires that furnishers establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a CRC.[17] The policies and procedures must be appropriate to the nature, size,

[15] 15 U.S.C. 1681s-(a)(2).
[16] *Id.*
[17] 12 CFR 1022.42(a).

complexity, and scope of each furnisher's activities."[18] Furnishers must consider and incorporate, as appropriate, the guidelines of Appendix E to Regulation V when developing their policies and procedures.[19] These guidelines address key business functions, such as record retention, training, third-party oversight, and receipt of feedback from CRCs and others that contribute to a furnisher's ability to ensure the accuracy and integrity of the data furnished to CRCs.

In previous issues of *Supervisory Highlights*, we described supervisory findings of furnishers that violated these requirements.[20] In recent supervisory reviews, we have identified further violations of the Regulation V requirement for reasonable written policies and procedures.

- In reviews of credit card furnishers, examiners found furnishers' policies and procedures had failed to specify how particular data fields, such as the date of first delinquency, should be populated when furnishing information about credit card accounts.
- Credit card furnishers' policies and procedures also had failed to provide for the retention of records for a reasonable period of time to substantiate the accuracy of consumer information furnished to CRCs. For example, examiners identified multiple instances where furnishers failed to retain records relating to direct disputes for the time period required by their own policies due to automated system purges of dormant accounts occurring on a shorter cycle than the applicable retention period.
- Examiners also found that had failed to perform account level analyses to determine which accounts should be reported in bankruptcy status after a consumer informs the furnisher of a bankruptcy filing. The furnishers' processes resulted in the reporting of

[18] *Id.*
[19] 12 CFR 1022.42(b).
[20] CFPB, *Supervisory Highlights*: Consumer Reporting Special Edition, at 4-7 (Dec. 2019); CFPB, *Supervisory Highlights*, Winter 2017, at 13-17 (March 2017). These editions are available at: [Supervisory Highlights | Consumer Financial Protection Bureau (consumerfinance.gov)].

bankruptcy status codes for accounts that had already been paid and/or closed prior to the bankruptcy filing.

- In reviews of auto loan furnishers, examiners found that furnishers had failed to incorporate content relating to the specific activities in which the furnishers engaged. For example, furnishers lacked procedures for furnishing accurate information in connection with leased automobiles returned to dealerships.
- In reviews of deposit furnishers, examiners found that furnishers had no written policies or procedures for furnishing deposit account information to specialty CRCs. Examiners also found that furnishers, in developing their policies and procedures, did not consider and incorporate the guidelines in Appendix E to Regulation V with respect to conducting reasonable investigations of consumer disputes relating to furnished deposit account information. For example, examiners identified furnishers that claimed to handle disputes through their existing complaints procedures despite those procedures failing to address the specific requirements under the FCRA for investigating and resolving consumer disputes.

After identification of these issues, furnishers are taking corrective actions including developing written policies and procedures regarding the accuracy and integrity of information furnished to CRCs and the proper handling of consumer disputes.

2.3 Credit Card Account Management

The Bureau assessed the credit card account management operations of supervised entities for compliance with applicable Federal consumer financial laws. Examinations of these entities identified violations of Regulation Z and deceptive acts or practices prohibited by the CFPA.

2.3.1 Billing error resolution violations

Regulation Z contains billing error resolution provisions that a creditor must comply with following receipt of a billing error notice from a consumer. Examiners found violations of the following provisions of Regulation Z:

- 12 CFR 1026.13(c)(1) by failing to mail or deliver written acknowledgments to consumers within 30 days of receiving a billing error notice;
- 12 CFR 1026.13(c)(2) by failing to resolve disputes within two complete billing cycles after receiving a billing error notice, due to human and system intake errors;
- 12 CFR 1026.13(e)(1) by failing to reimburse consumers after billing errors were determined to have occurred as consumers asserted;
- 12 CFR 1026.13(e)(2) by failing to mail or deliver correction notices to consumers resolving billing errors in their favor;
- 12 CFR 1026.13(f) by failing to conduct reasonable investigations after receiving billing error notices due to human errors and system weaknesses;
- 12 CFR 1026.13(f)(1) by providing inaccurate explanations to consumers as to why the creditor denied the consumers' billing error claims in whole or part or, in some instances, providing no explanation at all; and
- 12 CFR 1026.13(f)(2) by failing to provide consumers with the evidence the creditor relied upon to determine no billing error occurred, after the consumers requested the evidence to understand the creditor's determination.

In response to these findings, the relevant entities are implementing plans to improve compliance with Regulation Z's billing error resolution requirements, which include enhanced training, system improvements, enhanced monitoring, additional controls for consumer complaints, and revisions to applicable policies and procedures.

2.3.2 Rate re-evaluation violations

Under Regulation Z, as revised to implement the Card Accountability Responsibility and Disclosure (CARD) Act, after increasing a consumer's Annual Percentage Rate (APR or rate), credit card issuers have to periodically assess whether it is appropriate to reduce the account's APR(s).[21] Issuers must first re-evaluate each such account no later than six months after the rate increase and at least every six months thereafter.[22] In re-evaluating each account, the issuer must review (a) the factors on which the rate increase was originally based or (b) the factors the issuer currently considers when determining the APR applicable to similar, new consumer credit card accounts.[23]

Examiners found violations of these provisions of Regulation Z in connection with creditors' acquisitions of pre-existing credit card accounts from other creditors. In one set of violations, the creditors conducted rate re-evaluations on the acquired accounts but failed to reduce APRs to the appropriate level. Specifically, the creditors were unable to identify the lowest rate applicable to the acquired accounts because they failed to gather this data from the sellers during the acquisition. This rate data was necessary to the creditors' rate reevaluation analysis and, as a result, the creditors did not properly re-evaluate accounts as required by Regulation Z, causing monetary harm to consumers who did not receive APR rate reductions. In response to these findings, the creditors will provide remediation to impacted consumers and will enhance monitoring to ensure accurate rate information.

In a separate set of violations, the creditors failed to conduct re-evaluations of rate increases once every six months after certain APR increases on acquired accounts. For those accounts, the creditors failed to accurately record a review date in their system of record for rate re-evaluation and, as a result, their rate re-evaluation system did not identify these accounts for inclusion in the rate re-evaluation process. This resulted in monetary harm to consumers who were not included in the creditors' rate re-evaluation process and did not receive potential rate reductions. As a result, the creditors will remediate all affected consumers, develop new rate re-evaluation controls, and enhance exception reporting and monitoring activities.

[21] 12 CFR 1026.59(a).
[22] 12 CFR 1026.59(c).
[23] 12 CFR 1026.59(d)(1).

Finally, examiners found violations of these provisions of Regulation Z in connection with a failure to consider appropriate factors when performing rate re-evaluations. Specifically, when evaluating rate reductions, based on the factors considered when determining the APRs applicable to similar new accounts, the creditors considered certain minimum rates that formerly applied to their credit card accounts; however, at the time of their rate re-evaluation analyses, because these minimum rates no longer applied to the relevant credit card accounts, using them in the creditors' rate re-evaluation analyses violated Regulation Z. In response to these findings, the creditors will remove the inappropriate factors when determining the applicable APR following the re-evaluation of a rate increase and revise their relevant policies and procedures.

2.3.3 Deceptive advertising of interest-free financing and failure to process refunds in accordance with account disclosures

Sections 1031 and 1036 of the CFPA prohibit deceptive acts or practices.[24] Examiners found that certain entities engaged in deceptive acts or practices by advertising the interest-free financing feature of their credit card without adequately disclosing the preconditions for obtaining the financing. To receive the interest-free financing, consumers needed to satisfy two preconditions, including purchasing the products at a business partner's store or website and agreeing, at checkout, to pay for the product in monthly installments. Based on the net impression of the advertisements, consumers were misled about the preconditions necessary to receive the interest-free financing promotion, which were material to the consumers' decision to purchase the products with the credit card. As a result of these findings, the entities will undertake remedial and corrective actions.

Examiners also found that certain entities engaged in deceptive acts or practices by failing to process refunds in accordance with their credit card account holder agreements. The entities issued certain credit card accounts to customers which had both a revolving balance that accrued interest and a monthly installment balance that was interest-free for its duration. The

[24] 12 U.S.C. 5531 and 5536(a)(1)(B).

account holder agreements provided that refunds and credits would be applied to the revolving balance on the customer's account, and did not contain any provision stating that, if the purchase refunds on the revolving balance resulted in a negative revolving balance, the refund would instead be applied to the monthly installment balance. Nonetheless, when the refund would result in a negative revolving balance, the entities (1) applied revolving purchase refunds to the monthly installment balance, or (2) applied such refunds to the revolving balance temporarily, but then applied the negative revolving balance to the monthly installment balance when the monthly installment balance payment became due. These practices caused the interest-free installment balances to be paid prematurely, resulting in consumers losing the interest-free benefit they expected to receive and having fewer funds available to pay future interest-accruing revolving balances.

This practice was deceptive because the credit card account holder agreements misled consumers with regard to how refunds and credits would be applied to their account balances. In response to these findings, the entities will undertake remedial and corrective actions.

2.4 Debt Collection

The Bureau has supervisory authority to examine certain institutions that engage in consumer debt collection activities, including very large depository institutions,[25] nonbanks that are larger participants in the consumer debt collection market,[26] and nonbanks that are service providers to certain covered persons.[27] Recent examinations of larger participant debt collectors identified risks of violations of the Fair Debt Collection Practices Act (FDCPA) and the CFPA.

2.4.1 Using a false or misleading representation in connection with the collection of a debt cause by identify theft

[25] 12 U.S.C. 5515(a)-(b).
[26] 12 U.S.C. 5514(a)(1)(B), (b) and 12 CFR 1090.105.
[27] 12 U.S.C. 5514(e), 5515(d), 5516(e).

FDCPA section 807(2)(A)[28] states that a debt collector may not falsely represent the character, amount, or legal status of any debt in connection with the collection of any debt. Examiners found instances in which debt collectors violated this section by misrepresenting or implying to consumers that they were responsible for paying charges on their accounts that were incurred as the result of fraudulent activity.

Examiners found instances in which consumers had informed collectors that the establishment of the account was the result of identity theft. For example, consumers informed collectors that they had police reports related to the fraud. Notwithstanding the consumers' proffer of evidence supporting the identify theft, the debt collectors continued to represent that the consumers owed the debt by offering to allow the consumers to pay a reduced amount to settle the alleged debt, and then continuing to attempt to collect the debt. Examiners determined that, by continuing attempts to collect the debt and offering settlement, even after being informed of the fraud, the debt collectors misrepresented that the consumers were legally obligated to pay a debt created through fraud. In these instances, the debt collectors' agents deviated from the collectors' established policies and procedures, and the debt collectors issued refunds of consumer payments made after the misrepresentations.

2.4.2 Engaging in an unfair practice in connection with the collection of a debt by failing to timely refund overpayments or credit balances

The CFPA prohibits covered entities from engaging in unfair, deceptive, or abusive acts or practices in their interactions with consumers.[29] Examiners found multiple instances in which debt collectors may have engaged in an unfair act or practice in connection with the collection of a debt by failing to timely refund overpayments and credit balances to consumers. These practices caused or were likely to cause substantial injury to affected borrowers as consumers lost the ability to use funds for an extended period of time. Consumers could not reasonably

[28] 15 U.S.C. 1692e(2)(A).
[29] 12 U.S.C. 5531 and 5536.

avoid the injury as they were unlikely to know about the credit balances, and even if they became aware, the consumers had no way to expedite the refund process. The injury was not outweighed by countervailing benefits to consumers or competition. In response to these findings, the entities will report to the CFPB on remedial measures, including issuing full refunds to consumers, revising their policies and procedures, and strengthening their monitoring to ensure credit balances are timely refunded.

2.5 Deposits

The CFPB continues its examinations of financial institutions for compliance with Regulation E,[30] which implements the Electronic Fund Transfer Act (EFTA).[31] The CFPB also examines for compliance with other relevant statutes and regulations, including Regulation DD,[32] which implements the Truth in Savings Act,[33] and the CFPA's prohibitions regarding UDAAPs.[34]

2.5.1 Failure to remove a duplicative hold on an account

Examiners found that institutions engaged in unfair acts or practices by erroneously placing multiple holds on certain mobile check deposits that were deemed suspicious rather than placing the single holds that were intended. Through transaction testing, examiners identified accounts where the institutions had charged a consumer overdraft fees because the institutions failed to lift the initial automatic holds on the amounts of mobile check deposits after an additional suspicious deposit hold was placed on the account. This practice caused, or was likely to cause, substantial injury due to consumers incurring fees and losing access to funds that were unrelated to the suspicious mobile check deposit. Consumers could not reasonably avoid the injury, given that they could not have prevented the institutions from failing to comply with their

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[30] 12 CFR 1005 *et seq.*
[31] 15 U.S.C. 1693 *et seq.*
[32] 12 CFR 1030 *et seq.*
[33] 12 U.S.C. 4301 *et seq.*
[34] 12 U.S.C. 5531, 5536.

own internal procedures. And the injury was not outweighed by countervailing benefits to consumers or to competition.

The institutions' failures to implement policies and procedures that address these technical limitations led to the unfair practices. The institutions revised their policies and procedures governing holds and developed controls to monitor for and detect instances of duplicate holds. The institutions refunded the fees caused by these duplicate holds.

2.5.2 Failure to honor a timely stop payment request

Institutions violated the stop payment requirements of 12 CFR 1005.10(c) by failing to honor stop payment requests for preauthorized transfers tied to debit cards. Examiners found that the institutions' systems did not enable stopping a payment tied to a debit card. The institutions clarified the policies for this area and revised trainings to address this issue in the future.

2.5.3 Failure to investigate and determine whether an error occurred

Examiners continued to find issues with financial institutions failing to follow Regulation E error resolution procedures. Institutions violated Regulation E by failing to complete error investigations following consumers' notices of error because the consumers did not submit an affidavit.[35] Where consumers did not submit an affidavit, the institutions denied the error claims without investigating the merits of the error claims. A financial institution cannot require a consumer to file a police report or other documentation as a condition of initiating or completing an error investigation. The institutions updated policies and procedures and implemented remediation programs for affected consumers.

The Bureau has discussed this issue in FAQs on Electronic Funds Transfers and in *Supervisory Highlights*, Issue 24, Summer 2021.[36]

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[35] 12 CFR 1005.11(c)(1).
[36] The Electronic Fund Transfers FAQ (last updated Dec. 13, 2021) are available at: https://files.consumerfinance.gov/f/documents/cfbp_electronic-fund-transfers-faqs.pdf; *Supervisory Highlights*, Issue 24, Summer 2021 (June 29, 2021), is available at: https://www.consumerfinance.gov/documents/9840/cfpb_supervisory-highlights_issue-24_2021-06.pdf.

2.5.4 Failure to provide consumers with notice of revocation of provisional credit

Institutions violated 12 CFR 1005.11(d)(2) by failing to provide notices of revocation of provisional credit to consumers in connection with error investigations regarding check deposits at ATMs.

Consumers filed error claims stating that checks deposited at ATMs in specific amounts were not properly credited to their accounts. The institutions provided the consumers with provisional credits in the amounts claimed by the consumers; however, when the institutions retrieved the checks, they determined the check amounts were for lesser amounts than the consumers alleged in the error claims. The institutions debited the differences and sent the consumers written letters indicating the investigations were complete and the provisional credits of the lesser amounts were final, not addressing the fact that the institutions debited the difference between the amounts of the original provisional credits and the face values of the checks.[37]

The institutions violated Regulation E by failing to state that they would be debiting the excess amounts originally provisionally credited from the consumers' accounts, the dates the institutions would be debiting the excess provisional credits, or that the institutions would (as required by the regulation) honor certain transactions for five days after the notification.

In response to these findings, the institutions provided additional Regulation E compliance training to applicable staff, transitioned certain monitoring and oversight functions to an independent quality assurance/quality control team, and have identified opportunities to enhance error resolution letter templates.

2.6. Mortgage Origination

[37] Pursuant to the Official Staff Interpretations to Regulation E, Comment 1005.3(b)(1)-1, the term "electronic funds transfer" includes "[a] deposit made at an ATM . . . (including a deposit in cash or by check)."

Supervision assessed the mortgage origination operations of several supervised entities for compliance with applicable Federal consumer financial laws. Examinations of these entities identified violations of Regulation Z.

2.6.1 Compensating loan originators differently based on product type

Regulation Z generally prohibits compensating mortgage loan originators in an amount that is based on the terms of a transaction.[38] In the preamble to the Bureau's 2013 Loan Originator Final Rule, the Bureau responded to questions from commenters about whether it was permissible to compensate differently based on product types, such as credit extended pursuant to government programs for low-and moderate-income borrowers.[39] As explained by the Bureau there, it is not permissible to differentiate compensation based on credit product type, since products are simply a bundle of particular terms.[40]

Examiners found that certain lenders' loan originator compensation agreements provided for higher loan originator compensation where Federal National Mortgage Association (Fannie Mae) conforming fixed rate loans surpassed a designated threshold percentage of the total loans closed by the loan originator. This compensation was higher than the compensation paid when such loans did not surpass the designated threshold percentage. Paying higher commissions under these circumstances constitutes paying compensation based on credit product type, which, in turn, violates the Loan Originator Rule as compensation based on the term of a transaction, since products are simply a bundle of particular terms. As a result of these findings, the lenders have agreed to change their compensation plans to bring them into compliance with the Loan

[38] 12 CFR 1026.36(d)(1)(i).

[39] 2013 Loan Originator Compensation Rule, 78 FR 11279, 11326 (Feb. 15, 2013). The Bureau noted that the meaning of loan "product" is "not firmly established and varies with the person using the term, but it generally refers to various combinations of features such as the type of interest rate and the form of amortization." *Id.* at 11284.

[40] *Id*. at 11326-27, n.82. The Bureau further noted in the preamble that permitting different compensation based on different product types would create "precisely the type of risk of steering" that the statutory provisions implemented through the 2013 Loan Originator Final Rule sought to avoid. *Id.* at 11328.

Originator Rule. The Bureau previously discussed this issue in *Supervisory Highlights*, Issue 24, Summer 2021.[41]

2.6.2 Insufficient documentation for changed circumstance

Regulation Z requires a creditor to provide the consumer with good faith estimates on the Loan Estimate for certain transactions. The closing cost estimates are generally considered to be in good faith if the amount paid by or imposed on the consumer does not exceed the amount originally disclosed.[42] A creditor is permitted to use a revised estimate of a charge instead of the estimate of the charge originally disclosed to reset tolerances when there is a valid changed circumstance permitted by Regulation Z that resulted in the increased costs.[43] One such valid changed circumstance is where the consumer requests revisions to the credit terms.[44] For a creditor to successfully reset tolerances as permitted by Regulation Z, it must, among other things, maintain documentation explaining the reason for revision.[45]

Examiners found that certain lenders failed to retain sufficient documentation to establish the changed circumstance's validity. Specifically, the lenders disclosed an appraisal fee on initial Loan Estimates and subsequently disclosed appraisal rush fees, in a higher amount, on revised Loan Estimates. The lenders claimed the rush appraisals, which led to the appraisal rush fees, were requested by consumers. However, in each instance, the lender failed to maintain sufficient documentation evidencing the consumer's request of the rush appraisals; in fact, the documentation maintained reflected that either the appraisal management company notified the lenders that a rush appraisal would be needed or the lenders' loan officers requested the rush appraisal. In certain instances, the lenders' documentation included only a checked box indicating the consumer requested the rush appraisal, but there was no other evidence retained reflecting this occurred. In response to these findings, the lenders agreed to remediate affected

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[41] *Supervisory Highlights,* Issue 24, Summer 2021, is available at: [cfpb_report_template_logo_092820.docx (consumerfinance.gov).](cfpb_report_template_logo_092820.docx)
[42] 12 CFR 1026.19(e)(3)(i).
[43] 12 CFR 1026.19(e)(3)(iv).
[44] 12 CFR 1026.19(e)(3)(iv)(C).
[45] 12 CFR pt. 1026, supp. I, comment 19(e)(3)(iv)-3.

consumers, revise their policies and procedures to ensure relevant documentation is obtained and maintained, and strengthen relevant quality control audit functions.

2.6.3 Disclosures failed to reflect the terms of legal obligation

Regulation Z provides that closed-end disclosures, including the mortgage Closing Disclosure, must reflect the terms of the legal obligation between the parties.[46]

Examiners found violations of this provision relating to items on Closing Disclosures that did not reflect the legal obligation between the parties. Specifically, examiners identified instances where lenders' Closing Disclosures failed to reflect the fully-indexed-rate as required by the promissory note because the lenders' software miscalculated the disclosed rates. The software used a rounding method that is different from the method used in the corresponding promissory notes. The software automatically rounded up to the nearest one-eighth percent, despite the promissory note's instruction to round to the nearest one-eighth percent – up or down. This practice resulted in Closing Disclosures that do not reflect the terms of the legal obligation between the parties, and likely affected files and loans transferred to other loan servicers. As a result of these findings, the relevant lenders committed to update the rounding methodology and enhance monitoring and testing procedures to ensure that disclosures to consumers reflect the terms of the legal obligation between the parties.

2.7 Prepaid Accounts

The Bureau's Supervision program covers both institutions that issue prepaid accounts and prepaid account service providers. Recent examinations identified various violations of EFTA and Regulation E.

2.7.1 Prepaid account agreement submissions

Examiners found violations related to the requirement that financial institutions submit prepaid account agreements to the Bureau as set forth in Regulation E. Section 1005.19(b)(1) requires that prepaid account issuers make submissions of prepaid account agreements on a

[46] 12 CFR 1026.17(c)(1).

rolling basis no later than 30 days after an issuer "offers, amends, or ceases to offer any prepaid account agreement."[47]

Examiners determined that institutions failed to submit prepaid account agreements to the Bureau within 30 days of the effective date after they amend certain prepaid account agreements.

In addition, 12 CFR 1005.19(b)(1)(i) requires that each submission by a financial institution must contain, among other things, "the name of the program manager, if any, and the list of names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program.)" Examiners determined that institutions failed to submit, as part of their prepaid account agreement submissions, the names of the program managers, if any, and the lists of names of other relevant parties.

In response to these findings, institutions amended their compliance management systems, submitted, or resubmitted the amended prepaid account agreements to the Bureau with the additional required information, as applicable, and instituted increased monitoring of prepaid account agreements.

2.7.2 Stop Payment Requests

Examiners found violations related to the receipt of valid stop payment requests from prepaid account users. Regulation E states that a consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.[48]

Examiners determined that institutions failed to honor oral stop payment requests with respect to payments originating through certain bill pay systems, including both those initiated with the merchant, as well as within the bill pay system housed at the prepaid account program manager.

[47] 12 CFR 1005.19(b)(1).
[48] 12 CFR 1005.10(c)(1).

In response to these findings, institutions corrected their processes to allow for stop payment requests received orally or in writing, regardless of where the payment was originated, and remediated impacted consumers.

2.7.3 Error resolution documentation notice

Examiners found violations related to the notice provided to consumers after an institution determined no error or a different error than alleged by the consumer had occurred upon the completion of a Regulation E error investigation. Section 1005.11(d)(1) requires a financial institution to report the results of its investigation, including a written explanation of the institution's findings and the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution must promptly provide copies of these documents.

Examiners determined that institutions violated 12 CFR 1005.11(d)(1) by failing to include a statement noting the consumer’s right to request the documents that the institution relied on in making its determination after determining no error or a different error occurred as part of the report of the results. Examiners also found that institutions failed to fulfill consumers’ subsequent requests to provide the documentation relied upon to make the determinations that no error occurred.

In response to these findings, institutions updated their report of results letter templates to explicitly state the consumers’ right to request documents that the institutions relied on in making their error investigation determinations, and directed their service providers to institute compliance management system enhancements to ensure requests for documents were honored.

2.8 Remittances

The Bureau continues to examine institutions under its supervisory authority for compliance with Regulation E, Subpart B (Remittance Rule).[49] The Bureau also reviews for

[49] *See* 78 FR 30662 (May 22, 2013), as amended (codified at 12 CFR 1005.30 through 1005.36).

UDAAPs in connection with remittance transfers. Examiners identified violations of EFTA, Regulation E, and a deceptive act or practice.

2.8.1 Deceptive claims on transfer speeds for remittance transfers

Examiners found remittance transfer providers engaged in deceptive acts or practices by making false and misleading representations of "instant" and "30 second" transfers, even though the transfers may not be completed in 30 seconds or they may be otherwise delayed. Certain transfers could be delayed up to an additional 48 hours past the disclosed date of availability. These express claims, which failed to disclose or disclose adequately any exceptions, were likely to mislead consumers acting reasonably. And information about transfer speed would have been material to a consumer's decision as to which remittance transfer provider to use. In response to these findings, institutions implemented additional UDAAP training for their staff and ensured that their compliance departments review advertisements.

2.8.2 Remittance transfer account agreement waiver violations

Section 914 of EFTA, 15 U.S.C. 1693l, states that "[n]o writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter."[50]

Examiners found multiple instances where remittance transfer service agreements with consumers violated EFTA's prohibition on waivers of rights conferred or causes of action created by EFTA. Institutions violated EFTA by:

- Including a hold harmless and indemnification requirement that purports to limit claims against the institution, thereby waiving rights conferred by EFTA section 916.[51]
- Attempting to limit the consumer's right to recover costs and attorney's fees in a limited liability clause.[52]

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[50] 15 U.S.C. 1693l.
[51] 15 U.S.C. 1693m.
[52] EFTA section 916, 15 U.S.C. 1693m(a) allows the consumer to seek redress comprised of actual damages, up to $1,000 in statutory damages, and in the case of a successful action the costs of the action together with reasonable attorney's fees as determined by the court.

- Stating that the entity makes "no representations or warranties regarding the time required to complete processing because the Service is dependent on many factors beyond our control."[53]

In response to these findings, the entities undertook a number of corrective actions including updating their agreements to remove the offending language.

2.8.3 Disclosure and timing issues on receipts for remittance transfers

Examiners found multiple issues with remittance providers failing to comply with disclosure and timing requirements set forth in the Remittance Rule.

Section 1005.31(b)(2)(ii) requires remittance transfer providers to disclose on receipts the date in the foreign country in which funds will be available to the designated recipient.[54] Institutions violated this section by failing to disclose on the remittance transfer receipts the date the funds are available to the designated recipient. The institutions disclosed when the funds were delivered to the designated recipient's bank, but not the date on which the funds would be available to the recipient.

Section 1005.31(e)(2) requires the remittance transfer provider to provide the receipt required under § 1005.31(b)(2) no later than one business day after the date on which payment is made for remittance transfers made via mobile applications.[55] Institutions violated this section in instances where they failed to issue receipts until after the funds were successfully delivered to the intended recipients, outside the timeline required by § 1005.31(b)(2).

In response to these findings, institutions updated their policies to meet the timing requirements of the Remittance Rule.

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[53] Under 12 CFR 1005.33(a)(1)(iv)(A) failure to make funds available to the designated recipient by the date of availability is generally an error unless a specific exception applies. The exceptions are listed in sec. 1005.33(a)(1)(iv)(A)-(D).

[54] 12 CFR 1005.31(b)(2)(ii).

[55] 12 CFR 1005.31(e)(2).

2.8.4 Failure to develop and maintain written policies and procedures designed to ensure compliance with the remittance transfer rule, include the rule's record keeping requirements

Examiners found that institutions failed to develop and maintain written policies and procedures designed to ensure compliance with the error resolution requirements of the Remittance Transfer Rule as found in 12 CFR 1005.33(g). The absence of adequate written policies and procedures resulted in various violations of the substantive provisions of the error resolution requirements, including the erroneous exclusion of certain types of claims from the definition of an error under the Remittance Transfer Rule; improper delays in investigations, refunds and notices, and notices missing required information.

Several institutions also failed to implement written policies and procedures regarding the retention of documentation related to error investigations under the Remittance Transfer Rule. In response to these findings, Supervision directed institutions to revise error resolution policies and procedures and provide additional training to relevant personnel.

2.8.5 Disclosure, timing and refund issues relating to error investigations

Institutions failed to provide notice of the results of error investigations, including the notice of available remedies, as is required.[56] The institutions had erroneously coded the error claims as paid and the cases resolved, but failed to contact the senders to report on the results of their investigations.

Examiners also found that institutions failed to provide refunds in the amounts needed to resolve the errors within one business day, or as soon as reasonably practicable, after receiving the sender's instructions regarding the appropriate remedy, as is required.[57]

Examiners also determined that institutions failed to refund fees imposed for remittance transfers when the funds were not delivered to the designated recipients by the disclosed dates of

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[56] 12 CFR 1005.33(c)(1).
[57] 12 CFR 1005.33(c)(2)(ii)(A)(1).

availability, consistent with 12 CFR1005.33(c)(2)(ii)(B), as a result of the institutions' inabilities to reach the senders by phone.

Examiners found that institutions issued error claim denial letters that did not disclose to the sender that the sender has the right to request documentation used in the investigation.[58]

In response to these findings, institutions changed their policies and procedures.

2.9 Student Loan Servicing

The Bureau continues to examine student loan servicing activity, including at private student loan servicers, primarily to assess whether entities have engaged in any UDAAPs. Examiners identified three unfair acts or practices related to private student loan servicing.

2.9.1 Failing to make incentive payments

Examiners found that servicers engaged in unfair acts or practices by failing to make incentive payments that they offered in advertisements and agreed to make in the relevant contracts with consumers.

Examiners found that servicers were not making incentive payments described in advertisements or loan contracts in a variety of circumstances. Specifically, servicers failed to provide early repayment incentive payments, referral bonuses, and welcome bonuses due to system errors. Furthermore, in some instances servicers did not make early repayment incentive payments based on policies that made incentive payments contingent upon maintaining a deposit account with a specific financial institution, although they did not disclose this requirement in the loan contracts.

The servicers' conduct caused or was likely to cause substantial injury because consumers complied with the promotional program or contract terms and did not receive payments to which they were entitled. Because consumers impacted by the system errors had complied with all required terms and the servicer was in control of the program administration, consumers could not reasonably avoid the injury. Similarly, consumers impacted by the

[58] 12 CFR 1005.33(d)(1).

requirement to maintain a deposit account could not reasonably avoid injury because they were not adequately informed that the rebate was contingent upon maintaining a deposit account with that financial institution. And the substantial injury to consumers was not outweighed by countervailing benefits to consumers or competition. In response to these findings, servicers remediated affected consumers and implemented monitoring systems consisting of new weekly reports to capture all accounts with refunds due so that the servicers could confirm that they had made appropriate refunds.

2.9.2 Failing to issue timely refunds of specified payments after loan modification

Examiners found that servicers engaged in unfair acts or practices by failing to issue timely refund payments in accordance with the payment schedules in loan modifications. In response to the COVID-19 pandemic, some servicers offered student loan modifications. These modifications reduced the payments that a consumer owed for a set period of time and provided a specific repayment schedule. In some instances, the servicers entered into modification agreements that included effective dates that predated the date they were transmitted to consumers. Some consumers made payments that were not due under the repayment schedule provided for in the modification agreement and were therefore entitled to refunds of those payments. Examiners found that servicers failed to issue timely refunds to consumers.

This practice caused or was likely to cause substantial injury to consumers because they lost the use of money that should have been refunded. The injury was not reasonably avoidable because consumers reasonably relied on the specific terms described in the modification agreement and the servicers were in charge of the refund process. And the injury was not outweighed by countervailing benefits to consumers or competition. In response to these findings, the servicers conducted outreach to determine if consumers wanted a refund.

3. Supervisory Program Developments

3.1.1 CFPB invokes dormant authority to examine nonbank companies posing risks to consumers

On April 25, 2022, the CFPB announced that it is invoking a largely unused legal provision to examine nonbank financial companies that pose risks to consumers.

Before the CFPA was enacted only banks and credit unions were subject to Federal supervision. But after the 2008 financial crisis in which nonbank companies played a pivotal role, Congress tasked the CFPB with supervising certain nonbanks, in addition to large depository institutions with more than $10 billion in assets, and their service providers. Nonbanks do not have a bank, thrift, or credit union charter; many today operate nationally and brand themselves as "fintechs."

Congress authorized several categories of entities subject to CFPB's nonbank supervision program. First and foremost, all nonbank entities in the mortgage, private student loan, and payday loan industries, regardless of size. Another category of supervised entities includes what the law calls "larger participants" in other nonbank markets for consumer financial products and services. The CFPB conducted rulemakings to define thresholds for entities subject to supervision in the markets of consumer reporting, debt collection, student loan servicing, international remittances, and auto loan servicing.

The third category of entities subject to CFPB nonbank supervision are nonbanks whose activities the CFPB has reasonable cause to determine pose risks to consumers. This authority is not specific to any particular consumer financial product or service. While the CFPB did implement the provision through a procedural rule in 2013,[59] the agency has now begun to invoke this authority. This will allow the CFPB to be agile and supervise entities that may be fast-growing or are in markets outside the existing nonbank supervision program.

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[59] The 2013 procedural rule is available at: https://files.consumerfinance.gov/f/201206_cfpb_final-rule_certain-nonbank-covered-persons-risk-determination.pdf.

The CFPB also issued a procedural rule to increase the transparency of the risk-determination process.[60] The company involved will have an opportunity to provide input to the CFPB on what information is released to the public.

3.1.2 CFPB Targets unfair discrimination in consumer finance

On March 16, 2022, the CFPB published an updated exam manual for evaluating UDAAPs. These updates cover discriminatory practices that may also be "unfair" under the CFPA. The manual guides examiners in evaluating whether certain discriminatory practices meet the criteria for "unfairness" by causing substantial harm to consumers that they cannot reasonably avoid, where that harm is not outweighed by countervailing benefits to consumers or competition.[61] Consumers can be harmed by discrimination regardless of whether it is intentional. Discrimination can be unfair in cases where the conduct may also be covered by Equal Credit Opportunity Act (ECOA), as well as in instances where ECOA does not apply. For example, denying access to a checking account because the individual is of a particular race could be an unfair practice even if ECOA may not cover the transaction.

3.1.3 CFPB moves to thwart illegal auto repossessions

On February 28, 2022, the Bureau released a bulletin describing instances, in examinations and enforcement actions, where servicers violated the CFPA's prohibition against unfair, abusive, or deceptive acts and practices.[62] In particular, the Bureau intends to hold loan holders and servicers accountable for UDAAPs related to repossession of consumers' vehicles.

3.1.4 CFPB steps up scrutiny of student loan servicers that deceive borrowers about Public Service Loan Forgiveness

On February 18, 2022, the Bureau released a bulletin detailing student loan servicers' obligation to halt unlawful conduct regarding borrowers' eligibility and benefits under the

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[60] The procedural rule is available at: Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders (consumerfinance.gov).

[61] The updated exam manual is available at: https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf.

[62] The bulletin is available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-04-mitigating-harm-from-repossession-of-automobiles/.

limited waiver for the U.S. Department of Education's Public Service Loan Forgiveness (PSLF) Waiver.[63] The bulletin recommends actions servicers should consider taking to ensure they do not misrepresent borrower eligibility or make deceptive statements to borrowers about the PSLF program and the waiver.

3.1.5 CFPB issues bulletin to prevent unlawful medical debt collection and credit reporting

On January 13, 2022, the Bureau released a bulletin reminding debt collectors and CRCs of their legal obligations in light of the No Surprises Act, which protects consumers from certain unexpected medical bills.[64] Companies that try to collect on medical bills that are prohibited by the No Surprises Act, or who furnish information to CRCs about such invalid debts, may face significant legal liability under the FDCPA and FCRA. The bulletin advises CRCs that the accuracy and dispute obligations imposed by the FCRA apply with respect to debts stemming from charges that exceed the amount permitted by the No Surprises Act.

4. Remedial Actions

4.1. Public enforcement actions

The Bureau's supervisory activities resulted in and supported the following enforcement actions.

4.1.1 MoneyGram International, Inc. and MoneyGram Payment Systems, Inc

On April 21, 2022, the CFPB and New York Attorney General Letitia James announced that they filed a lawsuit against MoneyGram International, Inc. and MoneyGram Payment Systems, Inc. (MoneyGram)—one of the largest remittance providers in the U.S.—for repeatedly violating various consumer financial protection laws.[65]

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[63] The bulletin is available at: https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-03-servicer-responsibilities-in-public-service-loan-forgiveness-communications/.

[64] The bulletin is available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-bulletin-to-prevent-unlawful-medical-debt-collection-and-credit-reporting/

[65] A copy of the complaint is available at: cfpb_moneygram_complaint_2022-04.pdf (consumerfinance.gov).

CFPB examined MoneyGram between 2014 and 2016 and found multiple problems. Then in 2019, the CFPB did a subsequent exam to see if MoneyGram had fixed its problems. In short, for more than five years, the CFPB worked with MoneyGram to fully comply with the law, but MoneyGram continually failed to do so.

Specifically, the CFPB and New York Attorney General James allege:

- MoneyGram failed to deliver remittance funds by a date promised to consumers and held up remittance transfers and refunds unnecessarily. Holding the money in limbo resulted in needless delays and harmed or risked harm to consumers.
- MoneyGram failed to adequately instruct or direct its employees on how to comply with certain laws on resolving disputes. The company also failed to report the results of its error investigations to consumers and failed to provide adequate written explanation of its findings to consumers.
- MoneyGram failed to put in place policies and procedures designed to ensure compliance with certain record retention requirements. MoneyGram also failed to retain evidence of its compliance with certain money-transferring requirements as required.

The complaint seeks relief including damages and other monetary relief, an injunction to stop future violations, and imposition of civil money penalties. The complaint is not a final finding or ruling that the defendants have violated the law.

4.1.2 TransUnion Interactive, Inc. TransUnion, LLC, TransUnion, and John T. Danaher

On April 12, 2022, the Bureau filed a complaint in Federal court in the Northern District of Illinois against TransUnion, two of its subsidiaries, and longtime executive John Danaher for violating a 2017 law enforcement order, the CFPA's prohibition on deceptive acts and practices, EFTA and its implementing Regulation E, and Regulation V.[66] Chicago-based TransUnion is

[66] The complaint is available at: https://files.consumerfinance.gov/f/documents/cfpb_transunion_complaint_2022-04.pdf.

the parent company of one of the nation's three largest credit reporting companies. TransUnion collects consumer credit information, including borrowers' payment histories, debt loads, maximum credit limits, names and address of current creditors, and other elements of their credit relationships. Through its subsidiary, TransUnion Interactive, the company also markets, sells, and provides credit-related products directly to the public, such as credit scores, credit reports, and credit monitoring.

The Bureau alleges that TransUnion, its subsidiaries, and former executive John Danaher violated a January 3, 2017, consent order which settled charges for deceptively marketing credit scores and credit-related products, including credit monitoring services. As part of the 2017 settlement, TransUnion agreed to pay $13.9 million in restitution to victims and $3 million in civil penalties. TransUnion and its subsidiaries also agreed to a formal law enforcement order that, among other things, required the credit reporting company to warn consumers that lenders are not likely to use the scores they are supplying, obtain the express informed consent of customers for recurring payments for subscription products or services, and provide an easy way for people to cancel subscriptions. The order was binding on the company, its board of directors, and its executive officers.

In October 2018, the CFPB commenced an examination of TransUnion. In May 2019, CFPB examiners informed TransUnion that it was violating multiple requirements of the order. In these instances, companies typically work constructively with the CFPB to make quick fixes and come into compliance. However, in June 2020, CFPB informed TransUnion that it was still violating the order and engaged in additional violations of law.

In the April 12, 2022, complaint, the Bureau alleges that TransUnion and John Danaher engaged in multiple violations of law, including that TransUnion and Danaher violated the 2017 consent order; that TransUnion deceived customers through an array of digital dark patterns to trick people into recurring payments and to make it difficult to cancel them; and that TransUnion misrepresented numerous aspects of its products, services, and subscription plans, including that its credit monitoring service was a standalone credit score or credit report.

The CFPB is seeking monetary relief for consumers, such as restitution or return of funds, disgorgement of compensation for unjust gains, injunctive relief, and civil money penalties. The complaint is not a final finding or ruling that the defendants have violated the law.

4.1.3 Edfinancial Services, LLC

On March 30, 2022, the Bureau sanctioned Edfinancial Services, LLC, a student-loan servicer, for making deceptive statements to student loan borrowers and misrepresenting their forgiveness and repayment options to them.[67] Edfinancial deceived borrowers, with Federal Family Education Loan Program (FFELP) loans about their eligibility for PSLF. The Bureau is ordering the company to contact all affected borrowers, provide them with accurate information, and pay a $1 million civil money penalty.

Rohit Chopra,

Director,

Consumer Financial Protection Bureau.

[FR Doc. 2022-09690 Filed: 5/4/2022 8:45 am; Publication Date: 5/5/2022]

[67] The Consent Order is available at:https://files.consumerfinance.gov/f/documents/cfpb_edfinancial-services_consent-order_2022-03.pdf